

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

REMBRANDT WIRELESS
TECHNOLOGIES, LP

v.

SAMSUNG ELECTRONICS CO. LTD., ET
AL.

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Case No. 2:13CV213-JRG-RSP


**ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION
DENYING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Before the Court is Defendants’ Objections to the Magistrate Judge’s Report and Recommendation Denying Defendants’ Motion for Summary Judgment Due to Rembrandt’s Failure to Mark. (“Defendants’ Objections”) (Dkt. No. 270.)

In the Report and Recommendation (Dkt. No. 262), the Magistrate Judge correctly found neither Plaintiff, nor its licensee, Zhone Technologies, Inc. (“Zhone”), were required to mark products covered by claim 40 of United States Patent No. 8,023,580 (“the ’580 Patent”) due to Plaintiff’s disclaimer of this claim. *See* (Dkt. No. 262 at 5) (“Under Federal Circuit precedent, a disclaimed patent claim is treated as if it never existed. Neither party has provided any controlling legal authority contrary to this general approach specifically in the context of a marking analysis.”) (citations omitted). The Magistrate Judge further correctly found that a genuine dispute of material fact remains as to the non-disclaimed claims of the ’580 Patent. (*Id.* at 6.) Because Federal Circuit precedent mandates the patent be treated as if this claim “never existed” as a result of the disclaimer, it is now for the jury to resolve the material factual disputes that remain—*i.e.*, whether the Zhone products were covered by the ’580 Patent assuming claim 40 never existed.

For the foregoing reasons, the Court agrees with the conclusions of the Report and Recommendation that Defendants are not entitled to summary judgment, and the Court finds the Magistrate Judge's rulings neither "clearly erroneous [n]or contrary to law." 28 U.S.C. § 636(b)(1)(A); FED.R.CIV.P. 72(a). Accordingly, Defendants' Objections are **OVERRULED** and the Magistrate Judge's Report and Recommendation Denying Defendants' Motion for Summary Judgment Due to Rembrandt's Failure to Mark (Dkt. No. 262) is hereby **ADOPTED**.

So ORDERED and SIGNED this 9th day of February, 2015.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE